

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION IV

CA 06-784

FEBRUARY 28, 2007

RUSSELL BREWER		APPEAL FROM THE WORKERS'
	APPELLANT	COMPENSATION COMMISSION
		[NO. F211699]
V.		

WAL-MART STORES, INC.		
	APPELLEE	AFFIRMED

Appellant Russell Brewer sustained an admittedly compensable right shoulder injury while working for appellee Wal-Mart Stores, Inc., on September 11, 2002. Wal-Mart paid temporary total disability benefits and medical expenses associated with the shoulder injury, and Mr. Brewer returned to full duty on December 27, 2002. Mr. Brewer subsequently sought additional treatment related to his ongoing neck pain beginning on August 1, 2003, and on March 5, 2004, Dr. Luke Knox performed an anterior cervical discectomy and fusion at the C6-C7 level. Mr. Brewer maintained that his neck condition was a compensable consequence of the September 11, 2002, incident, and requested related medical expenses and temporary total disability benefits. However, the Commission denied additional benefits based on its finding that Mr. Brewer failed to prove that he suffered a compensable neck

injury. Mr. Brewer now appeals, arguing that the Commission's decision is not supported by substantial evidence. We affirm.

When reviewing a decision from the Workers' Compensation Commission, the appellate court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirms that decision if it is supported by substantial evidence. *Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002). Substantial evidence is such evidence that a reasonable mind might accept as adequate to support a conclusion. *See id.* The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision. *Id.* Where the Commission denies a claim because of the claimant's failure to meet his burden of proof, the substantial evidence standard of review requires that we affirm the Commission's decision if its opinion displays a substantial basis for the denial of relief. *Davis v. Old Dominion Freight Line, Inc.*, 341 Ark. 751, 20 S.W.3d 326 (2000).

Mr. Brewer testified that he began working for Wal-Mart as an over-the-road truck driver in July 1987. During his employment, he was involved in five work-related accidents, some of which resulted in injuries to his upper and lower back. The most recent accident, from which Mr. Brewer claims a compensable neck injury, occurred on September 11, 2002, when Mr. Brewer was attempting to latch a loaded trailer to his tractor. He stated that he

was cranking a handle and lowering the trailer when he injured his mid-back, cervical, and right-shoulder areas. Mr. Brewer felt pain in his shoulder area, which temporarily subsided. However, he was in extreme pain on the following morning and reported an injury to his right shoulder blade.

Mr. Brewer was seen by nurse practitioner Max Beasley on September 13, 2002, and Nurse Beasley diagnosed a shoulder strain. Nurse Beasley reported that Mr. Brewer denied having any neck pain, and x-rays of the cervical and thoracic spine revealed no obvious fracture or subluxation of his vertebrae. However, Nurse Beasley did note spurring at the anterior C5-C6 vertebra. Mr. Brewer was prescribed medication, returned to work with restrictions on his right arm, and was advised to return in a week.

Mr. Brewer was seen by Dr. Gary Moffitt on September 20, 2002. On that date, Dr. Moffitt reported that Mr. Brewer “is seen today for recheck for a shoulder strain,” and that Mr. Brewer said he was doing much better. Mr. Brewer was returned to full duty, but on September 26, 2002, he visited Dr. Moffitt and reported difficulty driving his truck due to his shoulder strain and neck pain. At that time, Dr. Moffitt placed work restrictions on appellant and referred him for physical therapy.

Mr. Brewer’s complaints continued, and Dr. Moffitt ordered a cervical MRI, which was performed on October 29, 2002. On November 1, 2002, Dr. Moffitt reported, “The MRI of his neck and shoulder are almost completely normal, and there [are] certainly no abnormalities severe enough to be causing the problems that he is having.” Dr. Moffitt

continued to treat Mr. Brewer for shoulder strain, and reported on December 13, 2002, that Mr. Brewer's shoulder was much better. On December 27, 2002, Dr. Moffitt reported, "Since he is doing so well, I think he may return to work with no restrictions. He has no permanent impairment and no return appointment."

Mr. Brewer returned to work without restrictions and continued to work for Wal-Mart for the next seven months, although he testified that he remained in pain during that time. He again sought treatment on August 1, 2003, when he was seen by Dr. Konstantin Berestnev. Dr. Berestnev documented neck pain radiating into Mr. Brewer's hands. Dr. Berestnev further reported:

He had an MRI done in October 2002 which showed a mild broad based central right paracentral disc protrusion at C6-7 level, but no evidence of fractures, dislocations or soft tissue injury. If this is the case, I don't think that the mild broad based disc protrusion would be responsible for the symptoms. I think that the symptoms are mostly related to the postural fatigue.

Dr. Berestnev ordered another MRI of the cervical spine, which was performed on August 8, 2003. On August 15, 2003, Dr. Berestnev reported that the second MRI "reveals no progression of his disease compared to the previous MRI from October 2002." Dr. Berestnev did note "straightening of the normal cervical lordosis" and "dessication of the old intervertebral discs and mild loss of vertical height identified at C5-6 and C6-7 level." However, he indicated that there were no acute findings on the MRI and that "all of the changes are degenerative." Dr. Berestnev assessed right-shoulder strain with neck and

thoracic pain, and prescribed physical therapy to teach Mr. Brewer to cope with his muscle fatigue.

Still seeking relief from his symptoms, Mr. Brewer visited his family physician, Dr. Billy Hall, who referred him to a neurosurgeon, Dr. Luke Knox. On October 27, 2003, Dr. Knox indicated that the October 2002 MRI showed a significant disc herniation at C6-C7, which was confirmed by the most recent MRI. In the face of these “rather pronounced findings of the MRI scans,” Dr. Knox ultimately performed the surgery on March 5, 2004. In a response to an inquiry by Mr. Brewer’s counsel, Dr. Knox wrote a letter dated September 22, 2004, wherein he stated:

Mr. Brewer was originally seen in the neurosurgery clinic on 10/27/03 for primary complaints of neck pain that have been going on for the past three months. I do not see in his original history that he defined this as being related to an injury secondary to his employment.... In answer to your question, I do not see that there was a specific traumatic injury that led to the treatment and ultimate surgery of Mr. Brewer.

Mr. Brewer testified that the surgery performed by Dr. Knox alleviated his symptoms to some extent. However, he indicated that he continues to suffer from neck pain that renders him unable to return to work as a truck driver.

Mr. Brewer argues on appeal that substantial evidence does not support the Commission’s finding that he failed to establish a compensable neck injury. He notes that x-rays of his back and cervical spine taken in October 2001 were unremarkable according to an x-ray report. While Dr. Moffitt interpreted the October 29, 2002, MRI to show no abnormality, and Dr. Berestnev reported primarily degenerative changes, Mr. Brewer

contends that these doctors were less qualified than his neurosurgeon, Dr. Knox. Dr. Knox detected a cervical herniation on each MRI, and Mr. Brewer asserts that reasonable minds would have credited his opinion. Mr. Brewer maintains that he did not have any significant neck problems prior to the September 11, 2002, work-related accident, and submits that the only reasonable conclusion was that the traumatic event resulted in his neck injury requiring surgery.

We hold that the Commission's opinion displays a substantial basis for denying compensability of Mr. Brewer's neck condition. As the Commission noted in its opinion, Mr. Brewer had experienced neck problems long before the September 11, 2002, incident. In this regard, appellant sought medical care for neck pain in August 1985; he was seen at a medical clinic for pain and stiffness in his neck in December 1994; he complained of his hands and arms falling asleep in May 2000, when his doctor noted tension in appellant's neck muscles; and he was involved in an 18-wheeler accident in July 2001, resulting in jarring to his neck and subsequent physical therapy sessions to treat his neck pain.

On his initial visit to Nurse Beasley following the September 11, 2002, accident, Mr. Brewer specifically denied having any neck pain. Mr. Brewer later reported neck pain to Dr. Moffitt on September 26, 2002. However, when Dr. Moffitt released him to work with no restrictions on December 27, 2002, Dr. Moffitt reported shoulder strain but no neck pain. Mr. Brewer returned to his work driving a truck for the next seven months, after which the focus of his complaints changed from his right shoulder to his neck.

While there was conflicting medical evidence in this case, it is well settled that it is the Commission's duty to resolve such conflicts. *See Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001). Dr. Moffitt found the first MRI to be almost completely normal, and Dr. Berestnev reported no acute findings and thought Mr. Brewer's problems were degenerative. Although x-rays taken before the accident showed no abnormality, Dr. Brewer's family doctor reported in July 2003 that x-rays were essentially unremarkable and that appellant had mild degenerative disc disease. And while Dr. Knox detected a herniation at C6-C7 for which he performed surgery, Dr. Knox nor any other physician reported any causal connection between appellant's neck condition and the accident at work.

Mr. Brewer relies heavily on the opinion of Dr. Knox, but Dr. Knox's opinion does not support his claim. When specifically asked about the causation of Mr. Brewer's neck condition requiring surgery, Dr. Knox indicated that Mr. Brewer had only complained of neck pain over the past few months when he first visited on October 27, 2003. Dr. Knox went on to state, "I do not see in his original history that he defined this as being related to any injury secondary to his employment," and "I do not see that there was a specific traumatic injury that led to the treatment and ultimate surgery of Mr. Brewer." Considering these statements along with the other evidence presented to the Commission, we cannot say that the Commission erred in denying additional benefits related to appellant's neck injury.

Affirmed.

GLADWIN and GRIFFEN, JJ., agree.

